

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

JAMES DAOUST,

Plaintiff,

v.

U UNLIMITED INC, *et al.*,

Defendants.

No. C 10-00678 LB

**ORDER FOR SUPPLEMENTAL
BRIEFING BY PLAINTIFF**

Pending before the Court is Plaintiff James Daoust's Application for Default Judgment against Defendants U Unlimited, Inc. and Eitan Spanier. (Dkt. #9.) The case is currently set for hearing before the Court on July 1, 2010. In preparation for the hearing, the Court **HEREBY ORDERS** Plaintiff to submit a Second Supplemental Brief addressing the following questions:

1. In his Fourth Cause of Action, Plaintiff asserts a Fair Labor Standards Act claim for failure to pay overtime compensation in violation of 29 U.S.C. § 207(a)(1). To plead an actionable claim under § 207(a)(1), Plaintiff must plead, in part, that: (a) during his workweek he was "engaged in commerce or in the production of goods for commerce," or (2) was "employed in an enterprise engaged in commerce or in the production of goods for commerce." *See Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 915 (9th Cir. 2003). Reviewing Plaintiff's Complaint, Plaintiff has not set forth any allegations that he was engaged in commerce or the production of goods for commerce.

1 Thus, the Court assumes that Plaintiff intends to proceed under the second criteria, specifically, that
 2 he was “employed in an enterprise engaged in commerce or in the production of goods for
 3 commerce.” Section 203(s)(1) of the FLSA sets out the definition of this phrase. Measuring the
 4 definition against Plaintiff’s allegations, it appears that while Plaintiff has alleged that Defendant U
 5 Unlimited “was an enterprise covered by the provisions of the [FLSA],” and that it “conducted
 6 business with a total gross sales volume in excess of \$500,000,” Plaintiff’s Complaint is devoid of
 7 allegations that would satisfy the commercial component of the definition set forth in 29 U.S.C.
 8 203(s)(1)(A)(i). (*See* Dkt. #1, Complaint, ¶¶ 43-44.) In other words, even though Plaintiff has
 9 alleged that at least Defendant U Unlimited is an “enterprise,” Plaintiff has not alleged that U
 10 Unlimited (or Defendant Spanier) “has employees engaged in commerce or in the production of
 11 goods for commerce, or that has employees handling, selling or otherwise working on goods or
 12 materials that have been moved in or produced for commerce by any person[.]” Nor does Plaintiff’s
 13 Complaint set forth any facts about Defendants’ business from which the Court may infer that such
 14 requirement is met. Even in the default judgment context, the Court must still consider the legal
 15 sufficiency of the allegations alleged in the complaint. *See Alan Neuman Prod, Inc. v. Albright*, 862
 16 F.2d 1388, 1392 (9th Cir. 1988); *Best W. Int’l, Inc. v. Akshay Hotels, inc.*, No. CV 07-358, 2007 WL
 17 2320383, at *1 (D. Ariz. Aug. 10, 2007). **The Court therefore directs Plaintiff to identify which**
 18 **additional allegations satisfy the commercial component of his 207(a)(1) claim, and/or to**
 19 **provide authority holding that such allegation is unnecessary.**

20 2. Before the Court may grant summary judgment in favor of a plaintiff, the Court must
 21 confirm that personal jurisdiction exists over the defendants. *See King v. Russell*, 963 F.2d 1301,
 22 1306 (9th Cir. 1992). **Accordingly, Plaintiff shall address the bases for personal jurisdiction**
 23 **over both Defendants, with citation to both supporting allegations in Plaintiff’s Complaint and**
 24 **relevant Ninth Circuit and California authorities.**

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Plaintiff shall e-file his Second Supplemental Brief no later than 5:00 p.m. on Thursday, June 24, 2010.

IT IS SO ORDERED.

Dated: June 21, 2010



LAUREL BEELER
United States Magistrate Judge